

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MICHAEL H. KURZMANN,	§
	§ No. 216, 2010
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Sussex County
STATE OF DELAWARE,	§ Cr. ID No. 0312007348
	§
Plaintiff Below-	§
Appellee.	§

Submitted: May 13, 2010

Decided: June 29, 2010

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices

ORDER

This 29th day of June 2010, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Michael H. Kurzmann, filed an appeal from the Superior Court's April 5, 2010 order denying his motion for correction of sentence pursuant to Superior Court Criminal Rule 35(a). The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior

Court's judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit.¹ We agree and affirm.

(2) The record reflects that, in April 2004, Kurzmann pleaded guilty to one count of Assault in the Second Degree and three counts of Endangering the Welfare of a Child in connection with his assault on his wife in the presence of his three children. On the assault conviction, he was sentenced to 4 years of Level V incarceration, to be suspended for 6 months at Level IV Home Confinement and 1 year at Level III probation. On each of the three child endangerment convictions, he was sentenced to 1 year at Level IV, to be suspended for 1 year at Level III probation.

(3) While on probation, Kurzmann again assaulted his wife. He subsequently was found to have committed a violation of probation ("VOP") and was sentenced to 7 years at Level V, the full suspended Level V term contained in his original sentence. The Superior Court also added a 6-month probationary period to the Level V sentence. Kurzmann's VOP sentence was affirmed by this Court on appeal.² Prior to his motion for correction of sentence, Kurzmann filed a Rule 61 postconviction motion and two motions for sentence modification, all of which were unsuccessful.

¹ Supr. Ct. R. 25(a).

² *Kurzmann v. State*, 903 A.2d 702 (Del. 2006).

(4) In this appeal, Kurzmann claims that his VOP sentence is illegal because the 6-month probationary period added by the Superior Court causes it to exceed the maximum allowable sentence.

(5) Under Del. Code Ann. tit. 11, §4334(c), the Superior Court may, upon revocation of probation, require the violator to serve the entire remaining suspended Level V sentence. Under Section 4204(1), the Superior Court must, when imposing a Level V sentence that totals 1 year or more, include as part of that sentence a 6-month period of custodial supervision of not less than 6 months. Moreover, that 6-month period “may, at the discretion of the court, be in addition to the maximum sentence of imprisonment established by the statute.”

(6) Because the VOP sentence imposed by the Superior Court was in conformity with the above statutes and, therefore, entirely legal, Kurzmann’s claim is without merit.

(7) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the State of Delaware's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice